



REPUBLIC OF KENYA



KENYA LAW
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**Munoru v Republic (Criminal Appeal E068 of 2024)
[2025] KEHC 6287 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E068 OF 2024**

DR KAVEDZA, J

MAY 19, 2025

BETWEEN

CHARLES MUHIA MUNORU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. R. Kitagwa (P.M) on 6th October 2023 at Kibera Chief Magistrate's
Court Criminal Case No. 644 of 2020 Republic vs Charles Mubia Munoru)*

JUDGMENT

1. The appellant was charged with two counts of offences: Robbery with violence contrary to section 296(2) of the *Penal Code* and Rape contrary to section 11(A) of the *Sexual Offences Act*, No 3 of 2006. After a full trial, he was found guilty on both counts and sentenced to forty (40) years imprisonment in Count I and ten (10) years imprisonment in Count II. The sentences were to run concurrently.
2. Aggrieved, he filed the present appeal challenging his conviction and sentence. In his petition of appeal and amended grounds of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He complained that the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.
3. This being a first appeal, it is the duty of this court, as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its own conclusion on that evidence. The court should, however, bear in mind that it did not see witnesses testify and give due consideration for that. (See *Okeno v Republic* [1972] EA 32).
4. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.



5. PW1, the complainant WMM, testified that on 12th July 2020 at around midnight, while en route from Ngando to Waithaka, she engaged a motorcyclist for a fare of Kshs 200. Upon reaching Mutuini near Green Pasture Church, the rider, identified as the appellant, feigned illness and alighted. He suddenly produced a knife, threatened to stab her, and demanded money. PW1 complied and handed over Kshs 2,000. The appellant then assaulted her by punching her in the face, causing a nosebleed, and dragged her into a nearby thicket. Despite the poor lighting, she clearly saw his face, as he was not wearing a helmet. He overpowered her and forcefully raped her before fleeing on the motorcycle.
6. PW1, in a distressed and partially undressed state, proceeded to Mutuini Police Station, which was located close to the scene, and made a report. She was escorted back to the location by an officer who assisted in recovering her torn clothes. She was issued a P3 form and received medical treatment at Nairobi Women's Hospital. PW1 later identified the appellant in a formal identification parade, citing that she had clearly memorised his facial features and body structure.
7. PW2, Clinical Officer John Njuguna, testified on behalf of his colleague Faith Mutisya, who had examined PW1 but was on extended leave. He confirmed her handwriting and signature on the PRC and GVRC forms. PW1 presented at their facility reporting rape and assault. She described being threatened, strangled, dragged into a bush, and raped after boarding a motorcycle. Examination revealed elevated blood pressure, bruises on the back, friction burns on the knees, and foul-smelling vaginal discharge. Her genital examination showed an old hymenal tag consistent with prior childbirth. She was confirmed to be two months pregnant. No STIs were detected.
8. PW3, PC Douglas Ombati, testified that PW1 arrived at the station around 1:30 a.m., visibly distressed and half-naked. He provided her clothing and recorded her report. He accompanied her to the scene, where they recovered a torn pink panty, a red bra, and a Samsung phone. An identity card belonging to the appellant was found inside the phone. The appellant was arrested the next day while searching for the same phone near the scene. PW1 positively identified him in a subsequent identification parade.
9. PW4, Inspector Elizabeth Konzolu, confirmed that three separate identification parades were conducted, all of which led to positive identification of the appellant by PW1. The process was explained to the appellant, who confirmed satisfaction with the procedure. The parade form was duly produced.
10. In his defence, the appellant opted to remain silent, and the trial court convicted him accordingly.
11. In count I, the key ingredients for a robbery with violence charge are found in section 296(2) of the [*Penal Code*](#). It provides as follows-

“if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death”.
12. The issues for consideration by this court are whether the appellant was positively identified and whether the prosecution did prove its case beyond reasonable doubt.
13. The complainant testified that her attacker was not wearing a helmet and that, despite dim lighting, she saw his face and body. Her identification was reinforced when she picked him out in three properly conducted identification parades. Further, a mobile phone recovered at the scene contained an identity card bearing the appellant's name and photograph, linking him directly to the incident.



14. In addition, the complainant stated that the appellant robbed her of Kshs 2,000 at knifepoint, physically assaulted her by punching her in the face, causing a nosebleed, and dragged her into a thicket where he raped her. These actions involved the use of a dangerous weapon and personal violence during the robbery. The appellant was later found near the scene searching for the phone and was arrested.
15. The combination of visual identification, recovery of personal items linked to the appellant, and the use of both a weapon and violence in the commission of the theft satisfies all the legal elements required to prove the offence. The evidence demonstrates a clear case of robbery involving violence, with sufficient linkage between the appellant and the crime. His conviction on count I for the offence of robbery with violence was therefore safe.
16. In count II, the issue is whether the offence was rape was proven beyond a reasonable doubt. Rape is defined under section 3 of the *Sexual Offences Act* to mean, the intentional and unlawful penetration of a person's genital organ into another's genital organ without their consent. In *R v Oyier* (1985) KLR pg 353, the Court of Appeal held as follows: -

“The lack of consent is an essential element of the crime of rape. The mens rea in rape is primarily an intention and not a state of mind. The mental element is to have intercourse without consent or not caring whether the woman consented or not. To prove the mental element required in rape, the prosecution had to prove that the complainant physically resisted or, if she did not, that her understanding and knowledge were such that she was not in a position to decide whether to consent or resist. Where a woman yields through fear of death, or through duress, it is rape and it is no excuse that the woman consented first if the offence was afterwards committed by force or against her will; nor is it any excuse that she consented after the fact.”
17. The complainant testified that the accused dragged her into a thicket, overpowered her, and forcefully inserted his penis into her vagina despite her resistance. She reported the incident immediately to the police while still partially naked. Medical evidence confirmed she had bruises, friction burns on her knees, and pain on her back and neck. A clinical officer testified that a vaginal examination revealed foul-smelling discharge and signs consistent with recent sexual activity, though no fresh hymenal injuries were observed due to her having previously given birth. Torn clothing, including her undergarments, was recovered from the scene.
18. The prompt report, physical injuries, medical findings, and consistent testimony provide sufficient evidence as proof of the offence of rape beyond reasonable doubt. His conviction for the offence of rape was therefore proper.
19. On sentence, the appellant was sentenced to serve 40 years in Count I and 10 years in Count II. The sentence was to run concurrently. In the sentencing proceedings, the trial court considered the appellant's mitigation, the pre-sentence report, and that he was a first offender.
20. Section 329 of the *Criminal Procedure Code* gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed, despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find the sentence-imposed shatters all hopes of the appellant for rehabilitation or having another chance to start afresh.
21. The upshot of the above analysis is that the appeal partially succeeds. The sentence of forty (40) years imprisonment imposed in Count I is hereby substituted with a sentence of twenty (20) years imprisonment. The sentence of ten (10) years imprisonment imposed in count II is maintained. The



sentences shall run concurrently from 13th July 2020, the date of his arrest, having spent the entirety of the trial in remand custody.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

